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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/902,965	07/11/2001	Steven B. Dunn	MBI-1067	9235

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EXAMINER

GRAVINI, STEPHEN MICHAEL

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 06/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/902,965
Filing Date: July 11, 2001
Appellant(s): DUNN ET AL.

MAILED
JUN 29 2006
GROUP 3700

John L. Knoble
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 24, 2006 appealing from the Office action mailed November 23, 2005

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

An appeal brief has been filed for related reissue application 09/902,904.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

GB 160,098 SLIPP et al. 3-1921

unpublished appealed reissue application 09/902,904

(9) Grounds of Rejection

The following grounds of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

Claims 5-15 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by either Slipp et al. (GB 160,098).

Double Patenting

Claims 5-15 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 4-7 of copending Application No. 09/902,904. Although the conflicting claims are not identical, they are not patentably distinct from each other because the presently claimed journal mounted axle is considered an obvious variation for the copending claimed first and second operative positions along a single axis of rotation since both describe substantially the same function in substantially the same way with substantially the same result.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

(10) Response to Argument

As a preliminary matter, the rejection of the claimed invention under Son (US 2,472,028) is withdrawn. Appellants did not appeal the double patenting rejection and therefore is maintained.

anticipation

(appellant issue 1)

Appellants assert that claims 5-12 are not anticipated by drying rack Slipp because the recited claim limitation "said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus" is not a prima facie prior art reference for anticipation. Current Office practice guides examination such that claims are reasonably and broadly construed in light of the specification.

Focusing on appellants' recitation "adjacent," it can be seen in Slipp that the entire peg c or d, is positioned adjacent an upper surface in either figure 3 or 4. Looking to appellants specification, the claim recitation "adjacent" is mentioned twice in the first full paragraph of column 4. Nothing is specified that the entire peg must be positioned adjacent an upper face, such that a portion above an upper face is precluded from being adjacent as claimed and argued by appellants. "Adjacent" is broadly and reasonably construed from the specification such that if the claimed peg is next to the specified upper surface, then the entire peg is adjacent the upper surface. Slipp shows an entire peg adjacent an upper surface and the statement of intended use (for storage and packaging of said apparatus) is disclosed in the folding drying rack of Slipp since it is collapsible (first page line 17) which would allow storage and packaging to those skilled in the art.

Appellants also assert that dependent claim 6 is not anticipated by Slipp because the recited claim limitation "frictional means connected to said pegs for frictionally engaging said upper portion of said tray wherein said pegs are moved between said first

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storage position and said second operative position” is not taught by that reference. Looking to primary reference Slipp figure 4, drying rack is illustrated in a first storage position and figure 3 is illustrated in a second operative position. Second page lines 17-20 disclose pins (or pegs) will remain in a vertical position until collapsed by hand (or user). To those skilled in the art of gravity and forces to overcome gravity, it should be recognized that the claimed second operative position is maintained by friction because a user must push in a desired direction for a first storage position which is inherently anticipated by Slipp because friction causes pins or pegs to remain in a second operative position until the hand of a user overcomes friction to collapse the pins or pegs toward a first storage position. Appellants further argue frictional means for frictionally engaging an upper portion of a tray. The teachings of Slipp are subject to the same frictional means and gravity as claimed. The frictional means apply to an upper portion, lower portion or any portion claimed or identified by appellants. The Office broadly and reasonably construes the claim recitation “for frictionally engaging” (emphasis added) as a statement of intended use which is not limited to only an upper face as argued, but all areas of the claimed invention as disclosed by the prior art.

Appellants further assert that dependent claim 6 and 10 are not anticipated by Slipp because the recited claim limitation “cam member connected to said axle and having a surface that is constructed and arranged to bear against said upper portion of said tray” is not seen from that reference. The face of that reference shows cam member *e* disclosed as bars which support pegs *c* or *d*. To those skilled in the art, a cam member is a device that allows another connected device to pivot around an axis

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of rotation. This reasonable and broadly construed claim term is consistent with appellants' specification parent application discussion in the first full paragraph of column 4 found in US patent number 6,125,548. Claim 7 is considered to be anticipated by Slipp especially when reading the last full paragraph on the first page of that reference, specifically cam member or bar e is pivoted as indicated at f.

Figures 1-4 are considered to show appellants argued claim feature of frictional means bearing against a horizontal portion of the upper portion of the tray when read with the third full paragraph of the second page of that reference.

Dependently claimed location means can be seen again from any of the figures and read in the third full paragraph of the first page of that reference because the folding features is broadly and reasonably construed to anticipate the claimed location means. Also dependently claimed cam stop surface defined in an upper tray face and elevated with respect to adjacent areas is also seen in the figures and disclosed in the bridging paragraph of the first two columns on the first page of that reference because the disclosed upright position would not allow plate support if it were not for cam stop as claimed by appellants. Finally dependently claimed second position is considered anticipated in figure 1 or 3 of Slipp since the second operative position is the upright position for the pegs.

The anticipatory rejection of claims 5-12 is considered proper and suggested it be affirmed.

(appellant issue 2)

Appellants assert that claims 13-15 are not anticipated by drying rack Slipp because the recited claim limitation "said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus" is not a prima facie prior art reference for anticipation. Current Office practice guides examination such that claims are reasonably and broadly construed in light of the specification.

Focusing on appellants' recitation "adjacent," it can be seen in Slipp that the entire peg c or d, is positioned adjacent an upper surface in either figure 3 or 4. Looking to appellants specification, the claim recitation "adjacent" is mentioned twice in the first full paragraph of column 4. Nothing is specified that the entire peg must be positioned adjacent an upper face, such that a portion above an upper face is precluded from being adjacent as claimed and argued by appellants. "Adjacent" is broadly and reasonably construed from the specification such that if the claimed peg is next to the specified upper surface, then the entire peg is adjacent the upper surface. Slipp shows an entire peg adjacent an upper surface and the statement of intended use (for storage and packaging of said apparatus) is disclosed in the folding drying rack of Slipp since it is collapsible (first page line 17) which would allow storage and packaging to those skilled in the art.

Appellants also assert that dependent claim 6 is not anticipated by Slipp because the recited claim limitation "axles are oriented so that movement of said pegs on a first of said axles when moving from said first storage position to said second operative position is substantially in the same rotation direction as movement of said pegs on a second of said axles when moving from said first storage position to said second

operative position" is not taught by that reference. Looking to any of the figures in primary reference Slipp, pegs **c** are considered to anticipate the argued feature because axle **f** allows all pegs **c** to move in a substantially same rotation direction as pegs **d**. Depending on the perspective of one skilled in the art, the downward rotation direction, shown by arrows in figure 3, of both pegs **c** and **d** is in the same planar rotation direction. Appellants argue that clockwise and counterclockwise rotation differentiates the claimed invention over the prior art. However, these argued features are not claimed. The rotation shown in Slipp is considered to anticipate appellants claimed rotation.

Lastly appellants argue that the dependently claimed cutout areas on a side of beneath is not anticipated by Slipp. To one skilled in the art a cutout area is a region that is cut away from a profile of an object to allow a user to lift that object. This reasonably broad claim construction is consistent with appellants' specification in column 2 lines 45-65 of parent patent number US 6,125,548. It can be seen from figures 3 or 4 of Slipp that under bottom region **b**, a cutout area exists to allow a user to lift that object.

The anticipatory rejection of claims 13-15 is considered proper and suggested it be affirmed.

double patenting

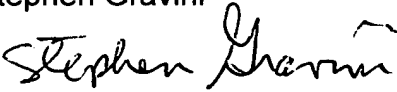
Since appellants have not appealed the double patenting rejection, it is recommended that the double patenting rejection above be affirmed.

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For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,

Stephen Gravini

A handwritten signature in black ink that reads "Stephen Gravini". The signature is written in a cursive style with a prominent "S" and a stylized "G".

Conferees:

Ehud Gartenberg SPE  (initials)

Kenneth Rinehart  (initials)